

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRENTON D. THOMPSON,

Plaintiff,

V.

DANIEL L. WILLIAMS, *et al.*,

Defendants.

Case No. C06-5476FDB-KLS

REPORT AND RECOMMENDATION

Noted for May 11, 2007

This matter has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This matter comes before the court on plaintiff's motion for summary judgment. (Dkt. #27). Having reviewed plaintiff's motion, defendants' response thereto, plaintiff's reply to defendants' response, and the remaining record, the undersigned submits the following report and recommendation for the Honorable Franklin D. Burgess' review.

DISCUSSION

Plaintiff filed his complaint with this Court on August 21, 2006. (Dkt. #1). He was granted *in forma pauperis* status on October 17, 2006 (Dkt. #4), and service of his complaint was ordered that same day (Dkt. #6). Defendants filed their answer on December 19, 2006. (Dkt. #23). On December 29, 2006, the Court issued a pretrial order setting a deadline of May 29, 2007, by which all discovery was to be completed, and a deadline of June 29, 2007, by which all dispositive motions were to be filed. (Dkt. #25). On January 22, 2007, plaintiff filed his motion for summary judgment.

1 Summary judgment shall be rendered if the pleadings, exhibits, and affidavits show that there is no
2 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
3 Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 56(c). When a motion for summary judgment is
4 supported as provided in Fed. R. Civ. P. 56, an adverse party may not rest upon the mere allegations or
5 denials of his pleading, but his response, by affidavits or as otherwise provided in Fed. R. Civ. P. 56, must
6 set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

7 In his motion for summary judgment, plaintiff asserted there were no genuine issues of material fact
8 as to his right to freely exercise his religion and to the equal protection of the law, and he was entitled to
9 judgment as a matter of law. In their response, defendants countered that no discovery yet had been
10 conducted in this matter, and that they required time to conduct reasonable discovery in order to be able to
11 respond to plaintiff's motion. Relying on Fed. R. Civ. P. 56(f), defendants argued plaintiff's motion was
12 premature, and thus should be denied or continued until such time as reasonable discovery could be made.

13 Fed. R. Civ. P. 56(f) reads as follows:

14 **(f) When Affidavits are Unavailable.** Should it appear from the affidavits of a party
15 opposing the motion that the party cannot for reasons stated present by affidavit facts
16 essential to justify the party's opposition, the court may refuse the application for
judgment or may order a continuance to permit affidavits to be obtained or depositions
to be taken or discovery to be had or may make such other order as is just.

17 The Court in its order, dated March 1, 2007 (Dkt. #37), thus noted that defendants were correct that Fed.
18 R. Civ. P. 56(f) provides for dismissal or continuance of a summary judgment motion to allow for proper
19 discovery to be had. The Court further noted, however, that Fed. R. Civ. P. 56(f) expressly states that the
20 party opposing the motion must present by affidavit the facts essential to justify opposition.

21 Because defendants had not presented the affidavit so required, the Court ordered them to do so.
22 The Court also gave plaintiff an opportunity to reply to any such affidavit defendants filed. On March 6,
23 2007, defendants filed the proper affidavit in the form of a declaration (Dkt. #38), and plaintiff replied
thereto (Dkt. #39). While plaintiff argues summary judgment should be granted in his favor based on the
25 statements he made in his motion and complaint, it is not unreasonable to allow defendants sufficient time
26 to complete discovery in order to properly respond to his allegations. Indeed, this is expressly what Fe. R.
27 Civ. P. 56(f) contemplates, and, as explained below, one of the primary the reasons as to why discovery is
28 permitted by the Federal Rules of Civil Procedure.

1 Plaintiff further asserts defendants have no need to conduct any discovery in this matter, because
2 the statements and information he has provided is all that is needed for the Court to decide the issues he
3 raised in his complaint. In addition, plaintiff argues he should be granted summary judgment, because
4 defendants have not presented anything that would create a genuine issue of material fact. It remains to be
5 seen, however, whether plaintiff ultimately has presented sufficient evidence to support his claims. Indeed,
6 the purpose of discovery is to allow the parties to discover facts that allow them to support their arguments
7 and positions. It is not surprising, therefore, that defendants would not be able to present much in the way
8 of a defense without being able to conduct discovery.

9 Accordingly, plaintiff's motion for summary judgment (Dkt. #27) should be denied. As noted
10 above, the discovery deadline in this case currently is set for May 29, 2007, with all dispositive motions
11 due June 29, 2007. Thus, while plaintiff's current motion for summary judgment should be denied at this
12 time, this does not prevent him from re-filing such a motion upon completion of the period provided for
13 discovery in this matter, should he choose to do so.

14 CONCLUSION

15 Based on the foregoing discussion, the undersigned recommends that the Court DENY plaintiff's
16 motion for summary judgment. (Dkt. #27).

17 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedures, the
18 parties shall have ten (10) days from service of this Report and Recommendation to file written objections
19 thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for
20 purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by
21 Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 11, 2007**, as noted in
22 the caption.

23 DATED this 13th day of April, 2007.

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26 
27 Karen L. Strombom
28 United States Magistrate Judge